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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of 47 C.F.R. Section) GC Docket No. 95-21
1.1200 *et seq.* Concerning *Ex Parte*)
Presentations in Commission)
Proceedings)

To: The Commission

COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION

NEXTEL COMMUNICATIONS, INC.

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Dated: June 4, 1997

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COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Comments in support of the Petition for Reconsideration ("Petition") of Lukas, McGowan, Nace & Gutierrez ("LMNG") in the above-captioned proceeding.^{1/}

In the Petition, LMNG seeks reconsideration of the Commission's decision to treat all informal complaints as exempt proceedings under the amended *ex parte* rules.^{2/} If exempt from the *ex parte* rules, the informal complaint process would allow unimpeded, unlimited communications between the complainant and the Commission staff without any notice to the targeted carrier,

^{1/} Petition for Reconsideration, GC Docket No. 95-21, filed May 5, 1997.

^{2/} Petition at p. 1. As noted by LMNG, a complaint is treated as informal if it not served on the target of the complaint. If the complaint is served on the targeted carrier, it is a "formal" complaint and is treated as a restricted proceeding, thus prohibiting all *ex parte* presentations. Petition at p. 3, citing Order at paras. 18, 22.

thereby depriving the targeted carrier of an opportunity to refute the complainant's allegations until the Commission solicits a response. The process, as adopted, therefore, is susceptible to manipulation by carriers seeking to create regulatory obstacles for their competitors.

Nextel supports LMNG's position that the Commission should not treat informal complaints filed by competitors of common carriers as exempt from the *ex parte* rules. The most appropriate way to protect against competitive abuses is to limit the scope of the informal complaint process to complaints filed by customers. Complaints by competitors of common carriers should be subject to the restrictions of the *ex parte* rules.

II. BACKGROUND

Nextel is the Nation's largest provider of 800 MHz Specialized Mobile Radio ("SMR") services. Nextel provides traditional analog SMR services as well as digital wide-area SMR services, which integrate mobile telephone, paging and dispatch communications in a single handset. Nextel is in the process of building out a nationwide all-digital wireless telecommunications network for the provision of its wide-area SMR services, and currently offers its digital services in approximately 225 cities throughout the Nation.

As a CMRS provider for its digital SMR and interconnected analog SMR services, Nextel is a common carrier subject to Title II of the Communications Act of 1934 ("Act"), including the complaint process under Section 208.^{3/} Section 208 subjects common

^{3/} 47 U.S.C. Section 208.

carriers to complaints by "any person, any body politic or municipal organization, or State commission" for any omission or action by the common carrier that is allegedly not consistent with the obligations of Title II of the Act.

Under the Commission's rules, complaints can be filed either informally or formally.^{4/} Since informal complaints are not subject to the Commission's recently adopted *ex parte* rules and can be filed by "any person," including customers and competitors, Nextel agrees with LMNG that the informal complaint process is potentially subject to abuse. As LMNG proposed, the Commission should limit informal complaint filings only to customers.

III. DISCUSSION

Nextel agrees with LMNG that the Commission's decision not to apply the *ex parte* rules to the informal complaint process could encourage potentially abusive filings by competing carriers -- particularly in light of the emerging competition in the CMRS marketplace. As competition increases and carriers seek avenues to distinguish themselves, carriers could have an incentive to raise regulatory barriers to their competitors by filing complaints. By permitting the filing of such complaints outside the scope of the *ex parte* rules, the Commission would allow carriers to file them without notice to the carrier subject to the complaint, effectively permitting one-sided unfettered discussions between the complainant and Commission Staff. The carrier subject to the complaint would have no knowledge of the complaint, and no ability to participate

^{4/} 47 U.S.C Sections 1.717 and 1.720, respectively.

in the process or defend its actions (or inaction) until the complainant has presented its own case fully. Such one-sided, unknown and unreported discussions are just the type of contacts that the *ex parte* rules are intended to prohibit.

To ensure that carriers in a competitive marketplace are, at a minimum, given the opportunity to swiftly and effectively respond to complaints filed against them, the Commission should amend its rules to limit the informal complaint process to customers of a common carrier. Limiting the informal complaint process in this manner would allow customers -- who may not be familiar with Commission rules and regulations governing proper service on parties -- to continue filing complaints under the informal processes while competitor's complaints would be treated as formal and therefore treated as restricted proceedings, thus potentially curbing competitive abuses. If the complainant is required to serve a complaint on its competitor and be prepared to rebut the competitor's arguments, it may be more selective in deciding to file questionable complaints against competing providers.

III. CONCLUSION

For the reasons discussed herein, Nextel supports the Petition of LMNG and requests the Commission to amend its rules to limit the informal complaint process to customer complaints.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

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Vice President and
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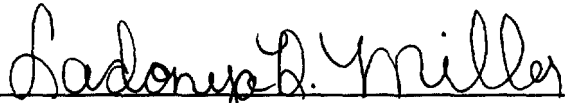
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Dated: June 4, 1997

CERTIFICATE OF SERVICE

I, Ladonya D. Miller, hereby certify that on this 4th day of June, 1997, I caused a copy of the attached Comments in Support fo Petition for Reconsideration of Nextel Communications, Inc. to be served hand delivery to the following:

Elizabeth Sachs, Esq.
Lukas, McGowan, Nace &
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A handwritten signature in cursive script, reading "Ladonya D. Miller", is written over a horizontal line.

Ladonya D. Miller